

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Crown Communication, Inc.	)	File Number EB-02-DV-281
	)	
Owner of Antenna Structure Number 1035006	)	NAL/Acct. No. 200332800010
Hobbs, New Mexico	)	FRN 0003-2470-87
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** February 28, 2003

By the District Director, Denver Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Crown Communication, Inc., ("Crown"), the registered owner of antenna structure number 1035006, in Hobbs, New Mexico, has apparently willfully and repeatedly violated Section 17.50 of the Commission's Rules ("Rules"),<sup>1</sup> by failing to repaint the antenna structure as often as necessary in order to maintain good visibility. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Crown is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On August 13, 2002, an agent from the FCC's Denver Office inspected an antenna structure bearing the FCC Antenna Structure Registration ("ASR") number 1035006 located in Hobbs, New Mexico, at coordinates N32-42-48 latitude and W103-05-30 longitude. The ASR shows the antenna structure to be 174.6 meters (573 feet) in height with a requirement to be painted and lit in accordance with FAA Advisory Circular ("AC") 70/7460-1H, Chapters 3, 4, 5 and 13. At the time of the inspection, multiple pieces of black coaxial cabling running vertically along one of the structure's three vertical faces reduced the visibility of the bands of aviation orange and white paint on the underlying antenna structure.

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<sup>1</sup> 47 C.F.R. § 17.50.

<sup>2</sup> 47 U.S.C. § 503(b).

### III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

4. Section 17.17(a) requires owners of registered antenna structures to maintain the structure's assigned painting and lighting.<sup>6</sup> Section 17.50 of the Rules requires that antenna structures requiring painting be cleaned or repainted as often as necessary to maintain good visibility. Antenna structure number 1035006 is required to be registered and the registration specifies painting and lighting in accordance with Part 17 of the Rules and FAA AC 70/7460-1H, Chapters 3, 4, 5 and 13. These painting requirements specify that the structure, and any appurtenances mounted thereon, be painted throughout the antenna structure's height with alternate bands of aviation surface orange and white, terminating with aviation orange bands at both top and bottom.<sup>7</sup> At the time of the inspection, the bands of alternating aviation orange and white paint on the underlying antenna structure were not visible or distinguishable on one-third to one-half of the tower when viewed from a northerly direction, due to the volume of unpainted cabling attached to the face of the structure. Based upon the evidence before us, we find that Crown willfully and repeatedly violated section 17.50 by failing to paint the cabling mounted to the exterior face of the antenna structure.

5. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),<sup>8</sup> and Section 1.80 of the Rules,<sup>9</sup> for failure to comply with prescribed antenna structure lighting or marking (painting) is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>10</sup> which include the nature, circumstances, extent, and gravity of the violation(s), and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$10,000 forfeiture is warranted.

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> Section 312(f)(2), of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>6</sup> 47 C.F.R. § 17.17(a).

<sup>7</sup> See 47 C.F.R. § 17.2; FAA AC 70/7460-1K, Chapters 2 and 3.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Crown Communication, Inc., is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violating Section 17.50 of the Rules.<sup>11</sup>

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,<sup>12</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Crown Communication, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

9. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>13</sup>

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>11</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80 and 17.50.

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> See 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 9431, Return Receipt Requested and First Class Mail, to Crown Communication, Inc., Attention: Monica Gambino, 2000 Corporate Drive, Canonsburg, PA 15317.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears  
Acting District Director, Denver Office

Enclosure: Attachment A